

1
2
3
4
5
6
7 UNITED STATES DISTRICT COURT
8 WESTERN DISTRICT OF WASHINGTON
9 AT SEATTLE

10 ROBERT JOHNSON, et al.,

11 Plaintiffs,

12 v.

13 NATIONSTAR MORTGAGE LLC,

14 Defendant.

CASE NO. C16-1031JLR

ORDER GRANTING IN PART
DEFENDANT'S MOTION FOR
PARTIAL SUMMARY
JUDGMENT AND DECLINING
SUPPLEMENTAL
JURISDICTION OVER STATE
LAW CLAIMS

15 **I. INTRODUCTION**

16 Before the court are two motions: (1) Defendant Nationstar Mortgage LLC's
17 ("Nationstar") motion for partial summary judgment (Nationstar Mot. (Dkt. # 16)), and
18 (2) Plaintiffs Robert Johnson and Kristin Johnson's (collectively, "the Johnsons") cross
19 motion for partial summary judgment (Johnsons Mot. (Dkt. # 31)).¹ Nationstar moves

20
21 ¹ Under Local Civil Rule 7(k), the court will ordinarily consider a motion and cross
22 motion together. Local Rules W.D. Wash. LCR 7(k). The Johnsons' cross motion for summary
judgment also serves as their response to Nationstar's motion. (*See* Johnsons Mot. at 1.) As a
response to Nationstar's motion, however, the Johnsons' memorandum was due on May 22,

1 for summary judgment on the Johnsons' claims under the Fair Debt Collection Practices
2 Act ("FDCPA"), 15 U.S.C. § 1692 *et seq.*, and the Washington Consumer Protection Act
3 ("CPA"), RCW ch. 19.16. (*See generally* Nationstar Mot.) The Johnsons oppose
4 Nationstar's motion and move for summary judgment on their FDCPA claim. (*See*
5 *generally* Johnsons Mot.)

6 The court has reviewed the motions, all submissions filed in support of and
7 opposition to the motions, the relevant portions of the record, and the applicable law.
8 Considering itself fully advised,² the court GRANTS Nationstar's motion for summary
9 judgment with respect to the Johnsons' FDCPA claim and DENIES the Johnsons' motion
10 on that claim. The court declines to consider Nationstar's motion regarding the
11 Johnsons' CPA claim. Having granted summary judgment on the Johnsons' only federal
12 claim, the court declines to exercise supplemental jurisdiction over the Johnsons'
13 remaining state law claims—including the Johnsons' CPA claim—and therefore
14 DISMISSES those claims without prejudice.

15 //

16 //

17 //

18 _____
19 2017. *See* Local Rules W.D. Wash. LCR 7(d)(3). The Johnsons did not file their memorandum
20 until May 25, 2017, and their response to Nationstar's motion was, therefore, untimely. *See id.*
21 The court nevertheless considers the Johnsons' response because Nationstar had an opportunity
22 to respond to the Johnsons' memorandum and is not prejudiced by the Johnsons' conduct. (*See*
Nationstar Resp. (Dkt. # 36).) The Johnsons did not file a reply memorandum in support of their
cross motion. (*See generally* Dkt.)

² No party requests oral argument, and the court determines that oral argument would not
be helpful to its disposition of the motions. *See* Local Rules W.D. Wash. LCR 7(b)(4).

II. BACKGROUND

In 2002, nonparties Richard E. McKinley and Louann C. McKinley (collectively, “the McKinleys”) purchased Lot 5, Sudden Valley, Division No. 38, Whatcom County, Washington (“the McKinley Property”). (Req. for Jud. Not. (“RJN”) (Dkt. # 17) Ex. 1.)³ In 2003, the McKinleys obtained a loan (“the McKinley Loan”) secured by a deed of trust (“the McKinley Deed of Trust”) that was recorded against the McKinley Property. (RJN Ex. 2.) At that time, the street address for the McKinley Property was 77 Sudden Valley Drive SE, Bellingham, Washington. (RJN Ex. 2 at 3, 18, 20, 23; *id.* Ex. 12.) Subsequently, the addresses in the Sudden Valley subdivision changed, and the McKinley Property address became 77 Marigold Drive. (Compl. (Dkt. # 1) ¶ 3; RJN Ex. 3 at 1, 6.)

In 1998, Mr. Johnson purchased Lots 84 and 85, Sudden Valley, Division No. 4, Whatcom County, Washington (“the Johnson Property”). (RJN Ex. 7.) At that time, the street address for the Johnson Property was 77 NE Sudden Valley Drive, Bellingham, Washington. (RJN Ex. 8 at 2, 7; *id.* Ex. 11.) Subsequently, the street address for the Johnson Property also changed and became the same as the former address for the McKinley Property—77 Sudden Valley Drive SE, Bellingham, Washington—instead of the previous “NE” prefix. (RJN Ex. 9 at 3, 12.)

³ Pursuant to Federal Rule of Evidence 201(b), Nationstar asks the court to take judicial notice of several documents that are official records of the Whatcom County Recorder’s Office. (See RJN at 4 (citing Fed. R. Evid. 201(b) and *Castillo-Villagra v. INS*, 972 F.2d 1017, 1026 (9th Cir. 1992)).) The Johnsons do not oppose Nationstar’s request. (See generally Johnsons Mot.; Dkt.) The court grants Nationstar’s request and takes judicial notice of the documents attached to Nationstar’s request. (See RJN Exs. 1-12); Fed. R. Evid. 201(b).

1 In July 2012, Nationstar began servicing the McKinley Loan. (Janati Decl. (Dkt.
2 # 18) ¶ 4;⁴ see 4/14/17 Sturdevant Decl. (Dkt. # 14) Ex. 8 at 59 (“The Loan Servicer
3 Nationstar Mortgage LLC is managing your loan.”), 62 (identifying Nationstar as the
4 “Beneficiary’s Authorized Agent”).) The McKinleys defaulted on their loan more than
5 two years later, in September 2014. (Janati Decl. ¶ 4.)

6 Nationstar subsequently directed the commencement of nonjudicial foreclosure
7 proceedings against the McKinley Property. (See 4/14/17 Sturdevant Decl. Ex. 8 at
8

9 ⁴ The Johnsons move to strike paragraphs four and five of Fay Janati’s declaration
10 concerning the dates when (1) Nationstar began servicing the McKinley Loan, (2) the McKinleys
11 defaulted on their loan, and (3) Nationstar generated a work order to secure the vacant McKinley
12 Property. (Johnsons Mot. at 9-10.) The Johnsons assert that (1) Nationstar cannot prove these
13 facts by declaration, but must instead produce documents, and (2) Nationstar is judicially
14 estopped from proving these facts because it did not produce the underlying documents. (See
15 *id.*)

16 First, the Johnsons never properly sought to compel the relevant discovery. Although the
17 Johnsons filed a motion to compel discovery from Nationstar (Mot. to Compel (Dkt. # 13).) The
18 motion, however, failed to comply with certain requirements in the court’s scheduling order, and
19 as a result, the court struck it without prejudice to refiling. (4/17/17 Order (Dkt. # 15).)
20 Although the court gave the Johnsons an opportunity to refile their motion to compel in a manner
21 that complied with the court’s scheduling order (*see id.* at 2 & n.1), the Johnsons failed to do so
22 (*see generally* Dkt.). Having failed to refile their motion to compel despite having the
opportunity to do so, the Johnsons cannot now raise Nationstar’s failure to produce the
documents at issue.

Second, judicial estoppel is inapplicable. Judicial estoppel bars a party from making a
factual assertion in litigation “which directly contradicts an earlier assertion in the same
proceeding or a prior one,” *Religious Tech. Ctr. v. Scott*, 869 F.2d 1306, 1311 (9th Cir. 1989),
and is “tantamount to a knowing misrepresentation to or even fraud on the court,” *Johnson v.*
State, Or. Dep’t of Human Res., Rehab. Div., 141 F.3d 1361, 1369 (9th Cir. 1998) (quoting *Ryan*
Operations G.P. v. Santiam-Midwest Lumber Co., 81 F.3d 355, 362-63 (3d Cir. 1996)). The
Johnsons fail to identify a prior inconsistent position by Nationstar that rises to the level
necessary to invoke judicial estoppel. (See Johnsons Mot. at 9-10.)

The best evidence rule is also inapplicable. See Fed. R. Evid. 1002. A declarant may
properly testify to information contained in business records so long as it is within his or her
personal knowledge. *Schaffer v. Litton Loan Servicing, LP*, No. CV 05-07673-MMM CTX,
2008 WL 9758641, at *15 (C.D. Cal. July 31, 2008); *Zakre v. Norddeutsche Landesbank*
Girozentrale, 396 F. Supp. 2d 483, 504 (S.D.N.Y. 2005). Accordingly, the court denies the
Johnsons’ motion to strike paragraphs four and five of Fay Janati’s declaration.

1 58-65 (containing the Notice of Default); 5/4/17 Bollero Decl. (Dkt. # 19) ¶ 2, Ex. A
2 (attaching a copy of Notice of Default).) Nationstar, acting on behalf of the McKinley
3 Deed of Trust beneficiary, appointed non-party Quality Loan Service Corporation of
4 Washington (“QLS”) as successor trustee. (RJN Ex. 5.) QLS issued a Notice of Default
5 to the McKinleys, dated March 24, 2016. (5/4/17 Bollero Decl. ¶ 2, Ex. A; 5/25/15
6 Sturdevant Decl. (Dkt. # 32) ¶ 4, Ex. C (Dkt. # 32-4).) The Notice of Default was
7 addressed to both McKinleys by their full names. (*See id.*) The Notice of Default also
8 specifically identified the McKinley Deed of Trust by current beneficiary, servicer,
9 recording date, and recording number, and it referenced the McKinley Property by legal
10 description and parcel tax identification number. (*See id.*)

11 QLS posted the Notice of Default at the McKinley Property. (4/14/17 Surdevant
12 Decl. Ex. 8 at 19 (Answer to Interrogatory No. 8).) QLS also mailed the Notice of
13 Default—addressed to both of the McKinleys—to several different addresses, including
14 both “77 Sudden Valley Drive SE” and “77 Marigold Dr.” (*Id.* at 56-57; 5/4/17 Bollero
15 Decl. ¶ 2 Ex. A.) On April 4, 2016, the Johnsons, who reside at what is now known as
16 “77 Sudden Valley Drive SE,” received and opened a copy of the Notice of Default
17 addressed to the McKinleys. (5/14/17 Bollero Decl. ¶¶ 3-4, Ex. B; *see* Compl. ¶ 7
18 (describing the Notice of Default from Nationstar contained in the letter from QLS).)
19 The Notice of Default, however, referenced the lot, division, and parcel number for the
20 house on 77 Marigold Dr., Bellingham, Washington 98229. (Compl. ¶ 7.)

21 The Johnsons understood that the Notice of Default from QLS was addressed to
22 the McKinleys and not to them. (6/12/17 Bollero Decl. (Dkt. # 37) ¶ 2, Ex. D (K.

1 Johnson Dep.) at 64:17-65:11, 67:22-68:4.) The Johnsons also understood that the
2 Notice of Default referenced the McKinley Deed of Trust and not theirs. (*Id.* at 68:5-18.)
3 Finally, the Johnsons understood that the Notice of Default referenced the McKinley
4 Property and not their property. (*Id.* at 68:19-69:15.)

5 Nationstar and QLS did not complete the nonjudicial foreclosure process against
6 the McKinley Property because the McKinleys sold their property to third parties on
7 April 29, 2016. (RJN Ex. 10.) Instead, Nationstar recorded a Deed of Reconveyance on
8 June 16, 2016. (RJN Ex. 6.)

9 Meanwhile, on June 29, 2015, due to the default on the McKinley Loan,
10 Nationstar asked its vendor, Mortgage Contracting Services, LLC (“MCS”), to verify the
11 occupancy of the McKinley Property. (Hager Decl. (Dkt. # 20) ¶ 4; 4/14/17 Sturdevant
12 Decl Ex. 8 at 16 (stating in response to Interrogatory No. 3 that “[t]he purpose of the visit
13 was to verify the occupancy and visually inspect the Liened Property”).) MCS assigned
14 the task to its sub-contractor, Sierra Field Services, Inc. (“Sierra”). (Hager Decl. ¶ 4.)
15 On July 6, 2015, a Sierra representative initially visited the Johnson Property rather than
16 the McKinley Property. (*See* Compl. ¶ 3; *see* 5/25/17 Sturdevant Decl. ¶ 6, Ex. E (“R.
17 Johnson Dep.”) at 27-31; Hager Decl. ¶¶ 4-5.) Mr. Johnson was aware of the change in
18 street names and informed the Sierra representative that she had the incorrect address.
19 (*See* Compl. ¶ 3; Hager Decl. ¶ 5; 6/12/17 Bollero Decl. ¶ 2, Ex. C (R. Johnson Dep.) at
20 27:14-24, 30:23-25.) The Sierra representative then visited the McKinley Property. (*See*
21 Compl. ¶ 3; 4/14/17 Sturdevant Decl. Ex. 8 at 38 (indicating that the property was
22 inspected on July 6, 2015).)

1 On or about July 6, 2015, MCS informed Nationstar that the McKinley Property
2 was vacant. (Hager Decl. ¶ 4; 4/14/17 Sturdevant Decl. Ex. 8 at 38 (stating:
3 “Occupancy: Vacant”); Janati Decl. ¶ 5.) MCS also uploaded the following comment to
4 MCS’s proprietary software, which was accessible to Nationstar:

5 Property address is 77 Marigold according to sudden valley security station
6 and the county assessor. . . . There used to be multiple sudden valley drives
7 in this community. A few years ago they changed the address. . . . After
8 speaking to an angry homeowner and talking to the assessor, the property
and owner we are looking for is at 77 Marigold. Marigold used to be sudden
valley dr [sic] SE but because of massive confusion with parcel delivery etc.
they changed the road names. . . .

9 (4/14/17 Sturdevant Decl. Ex. 8 at 39 (capitalization and punctuation in original); Hager
10 Decl. ¶ 5.)

11 On July 7, 2015, MCS, on Nationstar’s behalf, placed an “Initial Secure” work
12 order with Preservation Services, LLC, (“Preservation”) on a rush basis, in order to
13 secure the vacant McKinley Property. (Hager Decl. ¶ 6; Janati Decl. ¶ 5.) Preservation,
14 which is a sub-contractor of MCS, visited the Johnson Property on July 10, 2015—four
15 days after Sierra’s visit. (Hager Decl. ¶¶ 6-7; Compl. ¶ 4.) The Johnsons explained to
16 the Preservation representative that he was not at the McKinley Property, and the
17 Preservation representative left without performing any services on the Johnson Property.
18 (Compl. ¶ 4.) On July 10, 2015, MCS informed Nationstar by email about the address
19 discrepancy between the Johnson Property and the McKinley Property. (Hager Decl. ¶
20 7.) The Johnsons received no further visits from Nationstar, QLS, MCS, or any of
21 MCS’s subcontractors. (See Compl. ¶ 7.) Neither MCS nor any other entity ever altered
22

1 the Johnson Property in any way. (6/12/17 Bollero Decl. ¶ 2, Ex. C at 73:19-74:6, Ex. D
2 at 95:7-14.)

3 After the Johnsons received the letter on April 4, 2016, containing the Notice of
4 Default addressed to 77 Sudden Valley Dr. SE, they hired an attorney. (*See* Compl.
5 ¶¶ 7-8.) The attorney wrote to Nationstar, explained the address problem, and gave
6 Nationstar information concerning the Notice of Default from QLS. The Johnsons did
7 not receive a response from Nationstar. (*See id.*) However, the Johnsons have never
8 owed a debt to Nationstar (6/12/17 Bollero Decl. ¶ 2, Ex. D at 71:14-15; *see also id.* ¶ 6,
9 Ex. I (Answers to RFAs) at 7 (admitting that from January 1, 2015, to the present, the
10 Johnsons have not owed any debt to Nationstar)), nor has Nationstar ever serviced any
11 mortgage that the Johnsons had on any home (*id.* ¶ 2, Ex. C (R. Johnson Dep.) at 9:21-
12 23). Further, Nationstar has never demanded money from the Johnsons. (*Id.* ¶ 2, Ex D at
13 92:18-19.)

14 On July 1, 2017, the Johnsons filed suit, alleging causes of action for violations of
15 the FDCPA, 15 U.S.C. §§ 1692 *et seq.*; violations of the CPA, RCW ch. 19.16;
16 negligence; and negligent training and supervision. (*See* Compl. ¶¶ 21-42.) Nationstar
17 moves for partial summary judgment on the Johnsons' FDCPA and CPA claims. (*See*
18 *generally* Nationstar Mot.) The Johnsons oppose Nationstar's motion and move for
19 partial summary judgment on their FDCPA claim. (*See generally* Johnson Mot.)

20 //

21 //

22 //

III. ANALYSIS

A. Legal Standards

Summary judgment is appropriate if the evidence shows “that there is no genuine dispute as to any material fact and the movant is entitled to judgment as a matter of law.” Fed. R. Civ. P. 56(a); *see Celotex Corp. v. Catrett*, 477 U.S. 317, 322 (1986); *Galen v. Cty. of L.A.*, 477 F.3d 652, 658 (9th Cir. 2007). A fact is “material” if it might affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A factual dispute is “‘genuine’ only if there is sufficient evidence for a reasonable fact finder to find for the non-moving party.” *Far Out Prods., Inc. v. Oskar*, 247 F.3d 986, 992 (9th Cir. 2001) (citing *Anderson*, 477 U.S. at 248-49).

The moving party bears the initial burden of showing there is no genuine issue of material fact and that it is entitled to prevail as a matter of law. *Celotex*, 477 U.S. at 323. If the moving party does not bear the ultimate burden of persuasion at trial, it can show the absence of a dispute of material fact in two ways: (1) by producing evidence negating an essential element of the nonmoving party’s case, or (2) by showing that the nonmoving party lacks evidence of an essential element of its claim or defense. *Nissan Fire & Marine Ins. Co. v. Fritz Cos.*, 210 F.3d 1099, 1106 (9th Cir. 2000). If the moving party will bear the burden of persuasion at trial, it must establish a prima facie showing in support of its position on that issue. *UA Local 343 v. Nor-Cal Plumbing, Inc.*, 48 F.3d 1465, 1471 (9th Cir. 1994). That is, the moving party must present evidence that, if uncontroverted at trial, would entitle it to prevail on that issue. *Id.* at 1473. If the moving party meets its burden of production, the burden then shifts to the nonmoving party to

1 identify specific facts from which a fact finder could reasonably find in the nonmoving
2 party's favor. *Celotex*, 477 U.S. at 324; *Anderson*, 477 U.S. at 252.

3 The court is "required to view the facts and draw reasonable inferences in the light
4 most favorable to the [non-moving] party." *Scott v. Harris*, 550 U.S. 372, 378 (2007).
5 The court may not weigh evidence or make credibility determinations in analyzing a
6 motion for summary judgment because these are "jury functions, not those of a judge."
7 *Anderson*, 477 U.S. at 249-50. Nevertheless, the nonmoving party "must do more than
8 simply show that there is some metaphysical doubt as to the material facts Where
9 the record taken as a whole could not lead a rational trier of fact to find for the
10 nonmoving party, there is no genuine issue for trial." *Scott*, 550 U.S. at 380 (internal
11 quotation marks omitted) (quoting *Matsushita Elec. Indus. Co. v. Zenith Radio Corp.*,
12 475 U.S. 574, 586-87 (1986)).

13 "[W]hen parties submit cross-motions for summary judgment, each motion must
14 be considered on its own merits." *Fair Hous. Council of Riverside Cty., Inc. v. Riverside*
15 *Two*, 249 F.3d 1132, 1136 (9th Cir. 2011) (internal quotation marks and alterations
16 omitted). Thus, "the court must review the evidence submitted in support of each
17 cross-motion." *Id.* The court now addresses the parties' motions for summary judgment.

18 **B. FDCPA Claim**

19 Both Nationstar and the Johnsons move for summary judgment on the Johnsons'
20 FDCPA claim. (Nationstar Mot. at 9-19; Johnsons Mot. at 10-15.) For a plaintiff to
21 recover under the FDCPA, there are three threshold requirements: (1) the plaintiff must
22 be a "consumer," 15 U.S.C. § 1692a(3); (2) the defendant must be a "debt collector," 15

1 U.S.C. § 1692a(6); and (3) the defendant must have committed some act or omission in
2 violation of the FDCPA while attempting to collect a “debt,” 15 U.S.C. § 1692a(5), from
3 the plaintiff. *See Robinson v. Managed Accounts Receivables Corp.*, 654 F. Supp. 2d
4 1051, 1057 (C.D. Cal. 2009). Nationstar argues that the Johnsons fail each of these
5 elements. (Nationstar Mot. at 9-19.) As discussed below, the court concludes that
6 Nationstar is not a “debt collector” as is required for the Johnsons to prevail on their
7 FDCPA claim, and therefore declines to address Nationstar’s remaining two arguments
8 with respect to the Johnsons’ FDCPA claim.

9 The FDCPA requires that the defendant be a “debt collector,” which the statute
10 defines as:

11 [A]ny person who uses any instrumentality of interstate commerce or the
12 mails in any business the principal purpose of which is the collection of any
13 debts, or who regularly collects or attempts to collect, directly or indirectly,
14 debts owed or due or asserted to be owed or due another.

15 15 U.S.C. § 1692a(6). The statute expressly excludes from this definition “any person
16 collecting or attempting to collect any debt owed or due or asserted to owed or due
17 another to the extent such activity . . . concerns a debt which was not in default at the
18 time it was obtained by such person.” 15 U.S.C. § 1692a(6)(F)(iii). Thus, “the FDCPA
19 does not apply to lenders acquiring debt before default.” *Corales v. Flagstar Bank, FSB*,
20 822 F. Supp. 2d 1102, 1112 (W.D. Wash. 2011) (citing *De Dios v. Int’l Realty & Invs.*,
21 641 F.3d 1071, 1074 (9th Cir. 2011)).

22 The Johnsons offer no evidence disputing that (1) Nationstar commenced
servicing the McKinley Loan in July 2012, and (2) the McKinleys did not default on their

1 loan until more than two years later, in September 2014. (6/12/17 Bollero Decl. ¶ 4, Ex.
2 G; Fanati Decl. ¶ 4.) Consequently, based on the undisputed factual record, Nationstar
3 does not qualify as a “debt collector” under the FDCPA. *See Rector v. Wells Fargo*
4 *Dealer Servs.*, 672 F. App’x 779, 780 (9th Cir. 2017) (citing 15 U.S.C. § 1692a(6)(F)(iii))
5 (“The district court properly granted summary judgment on [the plaintiff’s] FDCPA
6 claim because [the plaintiff] failed to raise a genuine dispute of material fact as to
7 whether defendants were debt collectors within the meaning of the FDCPA.”); *Rich v.*
8 *Bank of Am., N.A.*, 666 F. App’x 635, 639 (9th Cir. 2016) (“Because the admissible
9 evidence shows that [the defendant] has serviced the loan since before [the debtors’]
10 default, the FDCPA does not apply to [the defendant] pursuant to 15 U.S.C.
11 § 1692a(6)(F)(iii).”); *Jara v. Aurora Loan Servs., LLC*, 633 F. App’x 651 (9th Cir. 2016)
12 (“The district court properly dismissed [the plaintiff’s] Fair Debt Collection Practices Act
13 claims because [the defendant] was not a debt collector under 15 U.S.C.
14 § 1692a(6)(F)(iii) where it assumed servicing responsibilities to [the debtor’s] loan prior
15 to any default.”); *Robinson v. Wells Fargo Bank Nat’l Ass’n*, No. C17-0061JLR, 2017
16 WL 2311662, at *5 (W.D. Wash. May 25, 2017) (“[A] loan servicer, such as Nationstar,
17 which acquires servicing rights before the loan at issue is in default, is not a debt
18 collector under the FDCPA.”).

19 The primary authority upon which the Johnsons rely to oppose Nationstar’s
20 motion and advance their FDCPA claim is *Bridge v. Ocwen Federal Bank, FSB*, 681 F.3d
21 355 (6th Cir. 2012). (*See* Johnsons Mot. at 12-14.) In *Bridge*, despite proof of Ms.
22 Bridge’s payment, the defendants made “endless” collection calls to both Ms. Bridge and

1 Mr. Bridge, threatened foreclosure, assessed monthly late fees, and reported derogatory
2 information to credit reporting agencies. 681 F.3d at 357. The Sixth Circuit reversed the
3 district court's dismissal of the plaintiffs' FDCPA claim on grounds that defendants were
4 not debt collectors under the FDCPA and held that the defendant could be held liable
5 under the Act for their attempts to collect a debt that the plaintiffs had already paid. *Id.* at
6 362-63. The Sixth Circuit found the defendants' arguments that it was not an FDCPA
7 "debt collector" "disingenuous" because after "after having engaged in years of
8 collection activity *claiming a mortgage is in default*, Defendants now seek to defeat
9 protections of the FDCPA by relying on Plaintiffs' position throughout those years that
10 the *mortgage is not in default.*" *Id.* at 361. In so ruling, the Sixth Circuit stated:

11 [An] FDCPA defendant cannot escape coverage under the Act by asserting
12 to the court that the debt was not actually in default, despite having dunned
13 plaintiffs for months or years in the face of plaintiffs' pleas or proof that the
14 collector has made some error. A defendant may not retroactively change
the status of the plaintiff it has pursued as an alleged debtor. To hold
otherwise would defy the clear congressional mandate we are charged with
upholding.

15 *Id.* at 362-63. The Sixth Circuit further held that Mr. Bridge, who was not a party to the
16 loan, was also protected from the defendants' conduct by the FDCPA. *Id.* at 363.

17 The Johnsons argue that "Nationstar contended that the Johnsons were in default
18 on the debt," and thus Nationstar "was a debt collector" pursuant to *Bridge*. (Johnsons
19 Mot. at 13 (citing *Bridge*, 681 F.3d at 360, 361).) *Bridge*, however, is factually
20 distinguishable. Here, unlike *Bridge*, there is no evidence that Nationstar ever asserted
21 that the Johnsons were in default on a debt. Instead, the evidence before the court
22 affirmatively shows the contrary. Although QLS sent Notices of Default to the Johnsons'

1 address and the Johnsons opened one of those envelopes, the Johnsons understood that
2 the Notice of Default was addressed to the McKinleys and not to them (6/12/17 Bollero
3 Decl. ¶ 2, Ex. D at 64:17-65:11, 67:22-68:4), referenced the McKinley Deed of Trust and
4 not theirs (*id.* at 68:5-18), and applied the McKinley Property and not their property (*id.*
5 at 68:19-69:15). Further, unlike *Bridge*, the Johnsons admit that Nationstar never
6 demanded any money from them.⁵ (*Id.* at 92:18-19.)

7 Nevertheless, as the Johnsons point out (*see* Johnsons Mot. at 11), the court must
8 consider not just whether Nationstar’s foregoing communications or actions deceived or
9 misled the Johnsons, but rather whether Nationstar’s communications or actions would be
10 likely to deceive or mislead “a hypothetical least sophisticated debtor.”⁶ *See Wade v.*
11 *Reg’l Credit Ass’n*, 87 F.3d 1098, 1100 (9th Cir. 1996) (internal quotation marks
12 omitted). The least sophisticated debtor standard “presumes a basic level of
13 understanding and willingness to read with care.” *Gonzales v. Arrow Fin. Servs., LLC*,
14 660 F.3d 1051, 1062 (9th Cir. 2011) (quotation and citation omitted). The court
15 concludes that Nationstar’s actions do not constitute a violation of the FDCPA because
16 even the least sophisticated debtor would understand that Nationstar was not attempting

17
18 ⁵ In addition, in *Bridge*, the plaintiffs alleged that Defendants were “debt collectors
19 notwithstanding the definitional exclusion contained in § 1692a(6)(F)(iii) (excluding activity
20 concerning a debt which was not in default at the time it was obtained) because Defendants
21 sought collection of [the plaintiff’s] ‘debt’ which they claimed was already in default at the time
22 they obtained it.” *Bridge*, 681 F.3d at 360. Here, unlike the allegations in *Bridge*, it is
undisputed that the McKinleys did not default on their loan until more than two years after
Nationstar began servicing the loan. (*See* Janati Decl. ¶ 4.)

21
22 ⁶ “Whether a communication would confuse a least sophisticated debtor, thereby
violating the FDCPA, is a question of law.” *Gold v. Midland Credit Mgmt., Inc.*, No.
13CV02019BLFMEJ, 2014 WL 3371012, at *3 (N.D. Cal. July 9, 2014).

1 to collect a debt from the Johnsons based on a Notice of Default that did not name the
2 Johnsons, did not concern the Johnsons' Deed of Trust, and did not identify the Johnson
3 Property.⁷ (6/12/17 Bollero Decl. ¶ 2, Ex. D at 64:17-65:11, 67:22-69:15.) *See, e.g.,*
4 *Guerrero v. RJM Acquisitions LLC*, 499 F.3d 926, 934 (9th Cir. 2007) (concluding that
5 even a hypothetical least sophisticated debtor would understand that a collection effort
6 was aimed at one and not two delinquent accounts where the letters contained the same
7 social security identifier, identical balances, the same creditor, nearly identical account
8 and file identifiers, and the same last payment dates). Accordingly, the court grants
9 Nationstar's motion for summary judgment on the Johnsons' FDCPA claim and denies
10 the Johnsons' motion for summary judgment on that claim.

11 **C. Supplemental Jurisdiction**

12 The Johnsons allege only federal question jurisdiction under 28 U.S.C. § 1331 and
13 15 U.S.C. § 1692k(d) of the FDCPA. (Compl. ¶ 9.) The court has now granted summary
14 judgment to Nationstar on the Johnsons' FDCPA claim, *see supra* § III.B, which is the
15 only federal question in the Johnsons' complaint (*see generally* Compl.).

17 ⁷ In addition to the misdirected Notice of Default, Nationstar's vendor, MCS, sent a
18 subcontractor to verify the occupancy of the McKinley Property (Hager Decl. ¶¶ 4-5) and
19 another subcontractor to perform preservation services on the McKinley Property (*id.* ¶¶ 6-7).
Both of these subcontractors initially mistakenly arrived at the Johnson Property rather than the
20 McKinley Property. (*Id.* ¶¶ 4-7.) The Johnsons, however, were able to correct and redirect the
21 two subcontractors who mistakenly visited their property instead of the McKinley Property. (*See*
22 6/12/17 Bollero Decl. ¶ 2, Ex. C at 27:4-28:13; *id.* Ex. D at 32:9-33:15, 34:6-25, 36:6-19.) Both
subcontractors left when the Johnsons informed them of the address mistake. (*Id.*) Further,
neither subcontractor did any damage to the Johnson Property. (*Id.* ¶ 2, Ex. C at 73:19-74:6, Ex.
D at 95:7-14.) The court concludes that even if these actions could be considered an attempt to
collect a debt by Nationstar, a hypothetical least sophisticated debtor would understand that any
such collection effort was not aimed at the Johnsons, but rather at the McKinleys.

1 “[W]here a district court has dismissed all claims over which it has original
2 jurisdiction, it may *sua sponte* decline to exercise supplemental jurisdiction over
3 remaining state law claims.” *Andrews v. Wash. State Dep’t of Soc. & Health Servs.*,
4 No. C15-5871BHS, 2017 WL 320621, at *1 (W.D. Wash. Jan. 23, 2017) (alterations in
5 original) (quoting *Sikhs for Justice “SFJ”, Inc. v. Facebook, Inc.*, 144 F. Supp. 3d 1088,
6 1096 (N.D. Cal. 2015)); *see also Acri v. Varian Assocs., Inc.*, 114 F.3d 999, 1001 n.3 (9th
7 Cir.), *supplemented*, 121 F.3d 714 (9th Cir. 1997), *as amended* (Oct. 1, 1997). District
8 courts may decline to exercise supplemental jurisdiction if: (1) the claim raises a novel
9 or complex issue of state law; (2) the state law claim substantially predominates over the
10 federal claim; (3) the district court has dismissed all claims over which it has original
11 jurisdiction; or (4) if there is some other exceptional and compelling reason to decline
12 jurisdiction. *See* 28 U.S.C. § 1367(c). In deciding whether to exercise supplemental
13 jurisdiction, the court should consider the interests of judicial economy, convenience,
14 fairness and comity. *City of Chi. v. Int’l College of Surgeons*, 522 U.S. 156, 173 (1997);
15 *Smith v. Lenches*, 263 F.3d 972, 977 (9th Cir. 2001).

16 Here, two of the enumerated provisions set forth in 28 U.S.C. § 1367(c) apply.
17 First, by granting summary judgment to Nationstar on the Johnsons’ FDCPA claim, the
18 court dismissed the only claim over which it has original jurisdiction. *See* 28 U.S.C.
19 § 1367(c)(3). Second, because only state law claims remain, the state law claims
20 necessarily substantially predominate over the federal claims. *See id.* § 1367(c)(2).

21 Further, the interests of judicial economy, convenience, fairness, and comity do
22 not favor the exercise of supplemental jurisdiction. “[I]n the usual case in which all

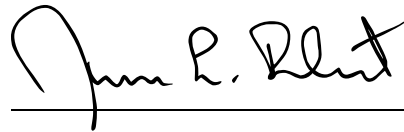
1 federal-law claims are eliminated before trial, the balance of factors to be considered
2 under the pendent jurisdiction doctrine—judicial economy, convenience, fairness, and
3 comity—will point toward declining to exercise jurisdiction over the remaining state-law
4 claims.” *Sanford v. MemberWorks, Inc.*, 625 F.3d 550, 561 (9th Cir. 2010) (quoting
5 *Carnegie-Mellon Univ. v. Cohill*, 484 U.S. 343, 350 n. 7 (1988), *superseded on other*
6 *grounds by statute as recognized in Fent v. Okla. Water Res. Bd.*, 235 F.3d 553, 557
7 (10th Cir. 2000)). Here, trial is two months away. (*See* Sched. Ord. (Dkt. # 11) at 1
8 (setting a September 11, 2017, trial date).) Although the court has resolved certain
9 discovery issues for the parties (*see* 6/2/17 Order (Dkt. # 35)), the court has not dealt in
10 any substantive manner with the Johnsons’ state law claims (*see generally* Dkt.).
11 Moreover, although the Johnsons’ state law claims may rest on similar—if not
12 identical—facts, the federal and state law claims are not similar in law and may not be
13 similar in outcome. Thus, issues of comity also favor having these state law claims heard
14 in state court. In sum, the court perceives no reason to depart from the “usual case” in
15 which the court dismisses the state law claims without prejudice following the court’s
16 pretrial disposition of all federal claims.

17 **IV. CONCLUSION**

18 For the reasons stated above, the court DENIES the Johnsons’ motion for
19 summary judgment (Dkt. # 31) and GRANTS in part and DECLINES TO RULE in part
20 on Nationstar’s motion (Dkt. # 16). Specifically, the court GRANTS Nationstar’s motion
21 and enters summary judgment for Nationstar on the Johnsons’ FDCPA claim, but
22 DECLINES TO RULE on Nationstar’s request for summary judgment on the Johnsons’

1 CPA claim. Instead, having granted summary judgment in Nationstar's favor on the only
2 federal claim in the Johnsons' complaint, the court declines to exercise supplemental
3 jurisdiction over the Johnsons' remaining state law claims and dismisses those claims
4 without prejudice.

5 Dated this 12th day of July, 2017.

6
7 

8 JAMES L. ROBART
9 United States District Judge
10
11
12
13
14
15
16
17
18
19
20
21
22